

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

WILLIAM J. BECKMANN,

Debtor.

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Case No. 98-10325-6B7

MEMORANDUM OPINION

At Orlando, in said District on April 5, 2000, before Arthur B. Briskman, Bankruptcy Judge.

This matter came on the Objection by Continental Casualty Company to Property Claimed as Exempt. Appearing were Norman Hull, attorney for the Debtor, William J. Beckmann; and Chris Copeland, attorney for Continental Casualty Company. After reviewing the pleadings and evidence, and hearing live testimony and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor filed for relief under Chapter 7 of the United States Bankruptcy Code on November 20, 1998.

Continental Casualty Company paid \$500,000.00 on a bond the company issued on behalf of Debtor as fiduciary of his mother's estate. Continental Casualty obtained a judgment in New York state court against Debtor in the amount of \$508,360.41. The judgment was domesticated in Florida and four Writs of Garnishment have issued against the Debtor.

The writs were served on First Union National Bank, NationsBank, Citrus Bank and Architectural Concepts, Inc. The garnishees answered that they held:

First Union:	\$2,507.47
NationsBank:	\$1,415.44
Citrus Bank:	\$195.06
Architectural Concepts, Inc. (Debtor's employer):	\$1,595.51

The Architectural Concepts, Inc. garnishment is still in force and attaches to twenty-five percent of Debtor's earnings.

Debtor moved to dissolve the writs alleging that the funds were exempt from garnishment pursuant to §222.11 of the Florida Statutes. A hearing was held on Debtor's motion to dissolve the writs. The Debtor filed the instant bankruptcy petition prior to the Florida state court ruling on the motion.

Debtor's schedules claim the amounts garnished as exempt property. Continental Casualty objected to the property being claimed as exempt. The funds at issue consist of \$4,065.33 in bank accounts and \$5,602.00 held by the Debtor's employer.

Debtor and his wife, Claire W. Beckmann, were married in 1987 in New York. Debtor is an electrical engineer employed by Architectural Concepts, Inc. At the time of the parties' marriage, the debtor was an engineer with his own practice and Mrs. Beckmann was employed as a secretary. The Debtor supported his wife and was responsible for paying the household expenses. The Debtor's responsibility for the payment of household expenses continued throughout the marriage. He has consistently paid the normal expenses associated with running a home, including the rents or mortgages, groceries, insurance for home and cars, life insurance, electric, water and sewer service, car payments, home repairs and miscellaneous expenses. Debtor organized the bills and determined which bills to pay and when, even during the interruption of Debtor's earnings by Continental's garnishments.

Debtor's income has almost always been higher than that of Mrs. Beckmann. Mrs. Beckmann was not employed and was fully supported by Debtor from 1989 through 1992, the period in which the Beckmanns were living in the Dominican Republic on land and in a home purchased and built by Debtor's financial resources. Mrs. Beckmann held only part-time employment from the parties' return to the United States in 1992 until 1996. From 1996 to the present, Mrs. Beckmann has held full-time employment.

Mrs. Beckmann receives full medical and dental insurance and participates in her employers 401K plan. In addition to this income, Mrs. Beckmann received rental income in the amount of \$2,000.00 per month for a two-year period starting on April 1997. Mrs. Beckmann's employment and rental earnings in 1997 and 1998 approached those of Debtor (\$56,000 and \$58,000 for Debtor and \$47,000 and \$53,500 for Mrs. Beckmann, respectively). Mrs. Beckmann declared capital gains of approximately \$105,000.00 for 1997 and approximately \$130,00.00 for 1998. Her total taxable income was approximately \$150,000.00 in 1997 and \$180,000.00 in 1998. Mrs. Beckmann's income and liquid assets preclude the possibility of her becoming a public charge or an object of charity.

For the majority of the marriage the Debtor has utilized his wages and earnings to pay the common household expenses including rents or mortgages, utility bills, car insurance bills, etc. Mrs. Beckmann has paid some of her own personal expenses, such as personal tennis lessons, throughout the marriage. She has paid very few basic household expenses. Her discretionary income has been directed primarily to building her personal retirement savings. Mrs. Beckmann provided Debtor money to pay household and personal bills when Debtor was unable to support the family during 1997 and 1998.

Debtor was paying all of the basic support and household expenses for the married couple at the time of the filing of the Chapter 7 petition on November 20, 1998.

Debtor was acting as the functional head of the family unit throughout the marriage. Debtor made the decisions which bills to pay and when to pay them. Debtor was the primary financial source for the majority of the marriage. Debtor received \$58,000.00 in salary in 1998. Mrs. Beckmann received \$53,500.00 in salary and \$130,000.00 in capital gains the same year. While Debtor functioned as the head of the family, Mrs. Beckmann was not dependent on him for more than half of her support at the time of the filing of the petition.

CONCLUSIONS OF LAW

Florida law governs Debtor's available exemptions. 11 U.S.C. §522(b); West's F.S.A. §222.20. Debtor claims that funds held by garnishees are exempt from claims of creditors pursuant to section §222.11 of the Florida Statutes, the "Head of Family" exemption. Section 222.11 of the Florida Statutes provides, in pertinent part:

Exemption of Wages from Garnishment.—

- (1) As used in this section, the term:
 - (c) "Head of Family" includes any natural person who is providing more than one-half of the support for a child or other dependent.
- (2)
 - (a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$500.00 a week are exempt from attachment or garnishment.
 - (b) Disposable earnings of a head of a family, which are greater than \$500.00 a week, may not be attached or garnished unless such person has agreed otherwise in writing. (emphasis added).

The issue in this case is whether Mrs. Beckmann qualifies as a dependent for the purposes of §222.11(1)(c). Florida case law gives limited guidance as to the definition of a dependent under this section of the Florida Statutes.

The parties may not stipulate as to family headship. Solomon v. Davis, 100 So.2d 177 (Fla. 1958); In re Estate of Kionka, 113 So. 2d 603 (Fla. 2nd DCA 1959). Whether an individual is a head of family is a question to be resolved on the facts of each case. Holden v. Estate of Gardner, 420 So.2d 1082, 1083 (Fla. 1982).

Debtor seeks the benefit of § 222.11(1)(c) of the Florida Statutes by claiming his wife as a dependant. Debtor maintains that, regardless of Mrs. Beckmann's ability to financially support herself, his consistent payment of household expenses during the marriage qualifies him as the "head of family." Support is not determinative of who is the head of family. In the Matter of Rivera, 5 B.R. 313 (Bankr. M.D. Fla. 1980); In the Matter of Barnes, 4 B.R. 600 (Bankr. M.D. Fla. 1980).

Florida exemption law is not to be used as a sword merely to defeat the claims of creditors. The purpose of the head of family exemption is to preserve the home and shelter for the family, so as to prevent the family from becoming a public charge. Vandiver v. Vincent, 139 So.2d 704 (Fla. 2nd DCA 1962).

A person qualifies as a dependent under §222.11 if that person's income is insufficient to sustain him or her without the support of the person claiming him or her as a dependent. In re Parker, 147 B.R. 810 (Bankr. M.D. Fla. 1992). Allowing Debtor to claim Mrs. Beckmann as a dependent to establish his entitlement to an exemption pursuant to §222.11 would permit Debtor to use the exemption as a sword merely to defeat the claims of creditors. It would also undermine the purpose of the statute: to prevent the family from becoming a public charge. Killian v. Lawson, 387 So.2d 960 (Fla. 1980).

The Debtor was the functional head of the family unit throughout the marriage. Debtor made the decisions which bills to pay and when to pay them. Debtor was the primary financial

source for the majority of the marriage. The time for determining the amount of support is the date the petition was filed. In re Monzan, 27 B.R. 50 (Bankr. S.D. Fla. 1983). The petition was filed in November 1998. The Debtor received \$58,000.00 in salary, and Mrs. Beckmann received \$53,000.00 in salary and \$130,000.00 in capital gains in 1998.

Mrs. Beckmann's income and assets preclude her becoming a public charge or an object of charity. She is not a dependent of the Debtor for purposes of §222.11. Therefore, the Debtor was not the head of family as defined by §222.11 of the Florida Statutes on the petition date, and he did not qualify for the claimed exemptions as provided pursuant to §222.11.

Continental Casualty's Objection to Property Claimed as Exempt is due to be sustained.

Dated this 30th day of June, 2000.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Court